

Dated

BETWEEN:

THE DIABETIC ASSOCIATION OF NEW SOUTH WALES

of the one part

AND:

THE TRUSTEES

of the other part

DEED OF TRUST

THIS DEED OF TRUST is made on the day of

1985

BETWEEN: **THE DIABETIC ASSOCIATION OF NEW SOUTH WALES** a company limited by guarantee and duly incorporated in the State of New South Wales having its registered office at 9th Floor, National Building, 250 Pitt Street, Sydney in the said State (hereinafter called "the Settlor") of the one part

AND: The persons named and described in the Schedule hereto (hereinafter called "the Trustees") of the other part

WHEREAS:

- A. The principal objects of the Settlor set forth in its Memorandum of Association (hereinafter called "the Memorandum") are, inter alia, the provision of an organisation for the benefit of and service of people living with diabetes and their carers, and the promotion of study of the cause and treatment of diabetes and for the attainment of such objects the Settlor is empowered to do all such things as are incidental or conducive thereto.
- B. The Settlor is by the Memorandum prohibited from paying or transferring directly or indirectly any portion of its income or property to its members and directed to apply the same solely towards the promotion of the objects set forth in the Memorandum.
- C. On 19th October 1984 the Settlor resolved that it should establish a trust for promotion of study of the cause and treatment of diabetes as herein provided and for the purpose of giving effect thereto has transferred or will upon execution hereof transfer or is about to transfer to the Trustees the sum of one hundred dollars (\$100.00) and the Trustees have consented to becoming Trustees thereof upon the trusts and for the purposes and subject to the powers rights discretions and provisions hereinafter set forth.
- D. By resolution NC 1/88-011 the DA Board resolved to establish Diabetes Australia Research and appoint it as trustee of DART.
- E. Diabetes Australia Research was incorporated on 6 March 1989 and, pursuant to NC 1/88-011, assumed the role of Trustee;
- F. The original trustees of DART were each invited to become directors of Diabetes Australia Research;

NOW THIS DEED WITNESSES as follows:

NAME OF CHARITY

- 1. The charitable trust established on 19th October 1984 and evidenced by this Deed shall be known as the 'Diabetes Australia Research Trust'.
- 2. In this Deed the following terms where the context admits have the following meanings:

- 2.1. "DART" means the Diabetes Australia Research Trust, being the charitable trust established on 19th October 1984 and evidenced by this Deed.
- 2.2. "Diabetes Australia" means the public company limited by guarantee and known as Diabetes Australia ACN 008 528 461.
- 2.3. "Diabetes Australia Research" means the public company limited by guarantee and known as Diabetes Australia Research Limited ACN 008 649 321 101.
- 2.4. "DA Board" means the board of directors of Diabetes Australia.
- 2.5. "Tax Legislation" means the Income Tax Assessment Act 1936 Cwth and / or the Income Tax Assessment Act 1997 Cwth.
- 2.6. "the Trustee" and "the Trustees" means each of the original Trustees or other Trustees for the time being hereof.
- 2.7. "the Trust Fund" means:
 - 2.7.1. the said initial sum of one hundred dollars (\$100.00) referred to in Recital C hereof;
 - 2.7.2. all moneys investments and property which any person or corporation may donate to or vest or cause to be vested in the Trustees to be held upon the trusts and with and subject to the powers and provisions hereof;
 - 2.7.3. the investments and property from time to time representing the said initial sum and any further or additional property (if any aforesaid) and all other additions thereto.

OBJECTS

- 3.1. The objects of DART are, so far, and so far only as the same are of a legally charitable purpose, exclusively to:
 - 3.1.1. provide money property or benefits to or for funds authorities or institutions, and for the purposes (if any), referred to in the Tax Legislation, or for the establishment of such funds authorities or institutions which by the laws of their State or Territory require registration, shall be so registered or be exempt from such registration; and
 - 3.1.2. provide independence, integrity, probity, management and oversight of the Diabetes Australia Research grant review; and
 - 3.1.3. to promote and advocate policy and funding for diabetes research.
- 3.2. Notwithstanding the foregoing, in any case where a section of the Tax Legislation, as amended, refers to a specific purpose the Trustees shall provide money property or benefits to or for a fund authority or institution referred to in that sub-paragraph only for that specified purpose.

TRUSTS

4. The Trustees since 19th October 1984 have held and shall continue to hold the capital and income of the Trust Fund upon trust to apply the same at such time or times as they may in their absolute discretion think fit for all or any one or more of the objects of DART as hereinbefore declared.

PUBLIC TRUST

- 5.1. DART shall at all times be open to subscription by all members of the public and shall at all times be controlled or administered by the Trustee.

INVESTMENTS

6. Money to be invested under the trusts hereof may be applied, or invested only in the following investments, that is to say:
 - (a) Any public funds or government stock or government securities of the Commonwealth of Australia or any State thereof;
 - (b) Any "at call" deposits made with "AA" rated Australian trading banks; or
 - (c) Such other investments as are authorised in advance by Diabetes Australia.

POWER OF TRUSTEES

7. The Trustees shall have only the following powers (and powers reasonably incidental to them) exercisable from time to time as the Trustees may think fit that is to say:
 - 7.1. Power to make authorised investments as aforesaid and to vary the same from time to time for others of any nature hereby authorised and to make the same in the name of the Trustees or in the name of any body corporate as nominee for the Trustees whenever it is convenient so to do.
 - 7.2. Power to collect and receive donations (whether periodical or otherwise) as they think fit.
 - 7.3. Power to issue appeals for donations, subject to receiving prior approval in writing from the DA Board, and to issue periodical reports of the work of the Trustee.
 - 7.4. Subject to clauses 3 and 8.6 hereof, power to decide to what extent and for what purpose or purposes moneys are to be applied under this Deed.
 - 7.5. Power to open an account or accounts (including current accounts) with "AA" rated Australian trading bank(s) and, subject to clause 8.2, to operate by and in all usual ways any such account or accounts.
 - 7.6. Power to sell, alienate or otherwise dispose of all or any part of the Trust Fund in such manner by public or private treaty and for such price in money or other consideration and upon such terms and conditions as the Trustees may determine

and to receive the consideration and grant discharges therefor and to invest such proceeds in any manner authorised by this Deed.

- 7.7. Power to accumulate that part of the income of the Trust Fund not otherwise applied pursuant to clause 7.4 hereof by investing the same and/or the resulting income therefrom from time to time in any of the modes of investment authorised by this Deed.
- 7.8. Power to determine whether any moneys shall for the purpose of this Deed be considered as capital or income and out of what part of the Trust Fund and whether out of income or capital any expenses outgoings or losses shall or ought to be paid or borne.
- 7.9. Subject to clause 7.19, power to employ managers agents advisers, solicitors, accountants or other persons in the execution of the trusts and powers herein contained and instead of acting personally from time to time employ and pay out of the Trust Fund such sums fees salaries commissions emoluments and expenses as the Trustee shall consider reasonable to any or all such managers agents advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the trusts hereby declared including the receipt and payment of money.
- 7.10. Power to act upon the opinion or advice of or information obtained from any financial adviser, lawyer, accountant, valuer, survey or auctioneer or other expert or professional person and so that the Trustees shall not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance therewith.
- 7.11. Power to determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund.
- 7.12. Power to institute and defend proceedings at law, to proceed to the final end and determination thereof or compromise the same and to take such other steps in relation to the same as the Trustees shall in their absolute discretion think fit.
- 7.13. Power to compromise and settle for such consideration and upon such terms and conditions as the Trustees shall in their absolute discretion think fit all matters arising in relation to the Trust Fund of the trusts hereof.
- 7.14. Power generally to do all such other lawful acts and things as are incidental or conducive to the attainment of the general purposes and conduct of DART.
- 7.15. Power to seek and procure, the registration of DART in accordance with the provisions of any act of law from time to time in force relating to charitable trusts if the Trustees shall think fit so to do.
- 7.16. Power to set aside out of the capital or income of the Trust Fund from time to time such sum of money as may in the opinion of the Trustees be sufficient to meet any debt or obligation due or accruing due.

- 7.17. Power from time to time to make regulations not inconsistent with the provisions of this Deed for the management of DART and to amend or revoke such regulations and to make additional regulations hereunder.
- 7.18. Power to defray out of the capital or income of the Trust Fund the expenses of administration of DART.
- 7.19. However, for as long as Diabetes Australia provides administrative services to DART, the Trustee will have no power to employ and pay a secretary or other staff.

ADMINISTRATION PROVISIONS

- 8.1. The conduct and management of the affairs of DART shall be under the control of the Trustee. The Trustee will:
 - 8.1.1. cause directors' meetings of the Trustee (sitting in its capacity as such) to be convened in accordance with its constitution at least once per quarter; and
 - 8.1.2. conduct all business of DART in accordance with this Deed and its constitution, and to the extent of any inconsistency this Deed will prevail.
- 8.2. All moneys received by DART shall be deposited intact at the earliest possible date to the credit of a bank account in the name of DART and receipts for moneys received shall be issued promptly. Until the DA Board approves otherwise, all cheques drawn on or electronic funds transfers or payments from DART's bank accounts require the signatures or authorisation of at least 2 appropriately authorised directors of the Trustee or employees of Diabetes Australia.
- 8.3. At the annual general meeting of the Trustee held pursuant to its Constitution, it shall appoint, in the absence of any reasonable objection by a director, an auditor or auditors nominated by the DA Board from time to time as its auditor who shall examine the books and records of the Trustee and DART and furnish a report in respect of the financial year ending on the 30th June in that year to the annual general meeting to be held not later than the month of November next following. An auditor shall not be a director of the Trustee or closely related to a director of the Trustee and unless the current auditor submits their resignation, notice of intention to nominate an auditor to replace the current auditor shall be given by any Trustee to the other Trustees at least 21 days before the annual general meeting and also to the current auditor who shall be entitled to attend and if he wishes to be heard at such Annual Meeting.
- 8.4. The financial year of DART shall conclude on the 30th June in each calendar year.
- 8.5. The Trustee shall not be entitled to any fees or remuneration or other benefit in money or moneys worth from DART except repayment of costs incurred in administering the Trust Fund.
- 8.6. The Trustee must ensure that its Constitution prohibits payments to any director of the Trustee except:

- 8.6.1. to reimburse a director for reasonable out of pocket expenses incurred by a director in the performance of any duty as director of the Trustee; or
 - 8.6.2. as payment for any services rendered to the Trustee by them on arm's length terms and in a professional or technical capacity and not as director; or
 - 8.6.3. pursuant to an indemnity in favour of a director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.
- 8.7. Before any disbursement is made to a particular fund or institute or for a particular purpose the Trustees shall ascertain from the Australian Taxation Office that such fund or institution or purpose has been approved for the purposes of the Tax Legislation.
- 8.8. Any determination by the Trustee in exercise of any power, discretion or authority conferred on the Trustee by this Deed may be made:
 - 8.8.1. in writing signed by the Trustee or (if there is more than one Trustee) by all Trustees;
 - 8.8.2. by a resolution duly passed at a meeting of the Trustee;
 - 8.8.3. in the case of a corporate trustee, in the manner set out in clause 8.9;
 - 8.8.4. by oral declaration recorded in the minutes of the Trustee;
 - 8.8.5. by oral declaration which is not published to any other person, in which case a certificate by the Trustee is prima facie evidence that the Determination was made as and when set out in the certificate; or
 - 8.8.6. by payment to, or for the benefit of, a person with the intention of distributing to the person the share of income or capital of the Trust Fund represented by the payment.
- 8.9. A Trustee being a corporation may exercise or concur in exercising any discretion or power conferred on the Trustee by a resolution of the corporation or of its directors or governing body or (not being a sole Trustee) by its representative appointed for the purpose of attending meetings of the Trustee.
- 8.10. The Trustee, if at any time they are more than one, must act jointly.
- 8.11. A sole Trustee may act as Trustee irrespective of whether previously there had been more than one Trustee.
- 8.12. The Trustee may pay any sum to which any religious, charitable or educational institution may become entitled or to which the Trustee desires to make any payment under this Deed to the secretary, treasurer or other proper officer of that body for the time being without being bound to see to its further application.
- 8.13. The Trustee must keep complete and accurate books of account and records of all receipts and expenditures on account of the Trust Fund.

- 8.14. Promptly after the close of each accounting period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period consisting of a statement of income and expenditure and a balance sheet.
- 8.15. A copy of the accounting report and the financial statements for the immediately preceding accounting period and a list of the assets held at the close of the accounting period, including the names and addresses of all persons having custody of the assets must be made available to the DA Board.

DISCRETION OF TRUSTEES

9. Every discretion or power hereby conferred on the Trustee shall be an absolute and uncontrolled discretion or power, unless this Deed states otherwise.

TRUSTEE INDEMNITY

10. In the professed execution of the trusts and powers hereof the Trustee shall not be liable for any loss to the Trust Fund arising by reason of any improper investment made in good faith or for the negligence or fraud of any agent employed by the Trustee even though the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by the Trustee or any other matter or thing excepting wilful fraud or wrongdoing on the part of the Trustee.

EXCLUSION OF BENEFIT TO TRUSTEES

11. Notwithstanding anything to the contrary hereinbefore contained, no discretion or power by the Deed conferred on the Trustee shall be exercised and no provisions of this Deed shall operate so as to cause any part of the capital or income of the Trust Fund to become payable to or applicable whether directly or indirectly for the benefit of the Trustee.

RESIGNATION OF TRUSTEE

12. The Trustee may at any time resign from office. In the event of such resignation the DA Board may by resolution appoint a single corporate trustee as a replacement trustee.

POWER OF AMENDMENT

- 13.1. Subject to clause 13.2, the provisions of this Deed may be amended varied or modified by resolution of the Trustee, the terms of which must also be approved by the DA Board. The terms of such amendment may, if the Trustee so desires, be evidenced by a Deed executed by the Trustee.
- 13.2. The power hereby conferred shall not extend to any amendment variation or modification whereby any benefit or advantage may be acquired by or accrue to any Trustee or any former Trustee of the Funds, nor to any amendment variation or modification which might cause DART not to be and remain a charity within the legal meaning of that term.

DISSOLUTION

- 14.1. DART, with the prior written approval of the DA Board, may be dissolved upon a resolution of the Trustee.
- 14.2. Upon DART being dissolved all of the assets and funds of DART after the payment of all expenses and liabilities shall be paid to such one or more of the funds institutions or authorities referred to in clause 3.1 hereof or for such one or more of the purposes there referred to as the Trustee shall determine.

CONFIDENTIALITY OF TRUSTEE'S DELIBERATIONS

- 15.1. In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose:
 - 15.1.1. any document disclosing any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee by this Deed or disclosing the reasons for any particular exercise or non-exercise of any power or discretion or the material upon which those reasons were or might have been based;
 - 15.1.2. any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed (not being legal advice obtained by the Trustee at DART's cost); or
 - 15.1.3. any reason for any exercise or non-exercise of any power or discretion.
- 15.2. For as long as Diabetes Australia has the right to appoint the Trustee, the Trustee must give Diabetes Australia full and free access to all records, books of accounts, registers, working papers, statements and other documents of DART and may not otherwise withhold information from it despite this clause 15.

NOTICES

- 16.1. Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with DART must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the intended addressee (Correspondence):
- 16.2. Correspondence to DART may be:
 - 16.2.1. sent by ordinary post to the Trustee's registered office;
 - 16.2.2. sent by fax to the last fax number notified by the Trustee; or
 - 16.2.3. sent by e-mail to the last email address notified by the Trustee.
- 16.3. Correspondence sent in accordance with this clause takes effect from the time it is received, unless a later time is specified. In particular:
 - 16.3.1. if sent by registered post, Correspondence sent in accordance with this clause is taken to be received on the date it is signed for by the addressee;

- 16.3.2. if sent by ordinary post, Correspondence sent in accordance with this clause is taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia);
- 16.3.3. if sent by fax, Correspondence sent in accordance with this clause is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.
- 16.4. Despite clause 16, if Correspondence is received after 5.00 pm in the place of receipt or on any day that is not a business day in the place of receipt, it is to be taken to be received at 9.00 am on the next business day in the place of receipt.

LAW OF TRUST

- 17.1. Subject to the provisions of clause 17.2, this Deed is governed by the law of the Australian Capital Territory:
- 17.2. The Trustee may by deed declare that DART takes effect from the date of the declaration in accordance with the law of some other state, territory or part of the world but not if under the law of that other state, territory or part of the world:
- 17.2.1. any of the trusts, powers and provisions declared in this Deed and contained would not be enforceable or capable of being exercised and so take effect; and
- 17.2.2. the terms contained in this Deed would not be able to be changed.
- 17.3. As from the date of the declaration, the law of the state, territory or part of the world named in the declaration is the law applicable to DART and the courts of that state, territory or part of the world are the forum for the administration of DART but subject to the powers conferred by this clause and until any further declaration is made under this clause.

SCHEDULE

The Trustees:

Name	Occupation
Sir Garfield Edward John Barwick	Barrister
Katrina Anne Lee Potter	Television Journalist/Producer
John Anthony Townend	Television/Film Producer
John Ross Turtle	Professor of Medicine